



Maricopa County

Air Quality Department
Guidance Document

Guidance Document
GD-2008-01

Title: Maricopa County Air
Quality Department
Guidance Document for the
Enforcement Division Appeal
Process

Supersedes:
Not apply

Effective: October 1, 2008

Initiator: Randy Ballard, **RB**

Director (acting): Joy Rich, **JR**

Introduction

The preferred manner to handle enforcement matters is through the Order of Abatement by Consent (“OAC”) process. The OAC process engages in a dialog the Maricopa County Air Quality Department (“Department”) Enforcement Division (“Division”) and the party (“Party”) cited with violating the Maricopa County Air Pollution Control Rules or other applicable law to jointly review the facts supporting a cited violation. The Division and Party discuss the evidence, potential remedial action and a penalty amount if warranted. The Division may propose a reduced penalty to the Party if it settles during this expedited OAC period. The Division recognizes there may be times when the OAC process does not satisfy the expectations of the Party and in those rare instances the Party may initiate this Enforcement Division Appeal Process.

Process

Within 15 days from the date on the Division’s Final Offer of Settlement or of a written extension to appeal granted by the Division the Party may file a written appeal with the hearing administrator. The hearing administrator may be contacted at the following:

Hearing Administrator
Maricopa County Planning & Development,
501 N. 44th Street, Suite 200
Phoenix, Arizona 85008
(602) 506-3694

The Party’s written appeal must specify the matters being appealed and state the basis for the appeal. An appeal may be denied if the Department’s executive head (“Control Officer”) determines the Party failed to provide requested information to the Division on a timely basis, failed to make a good faith attempt to resolve the matter through the OAC process or for other reasons.

During the OAC process the Division may offer the Party a reduced penalty as an incentive for the expedited resolution of the matter. Any reduced penalty offered by the Division will not be valid following the Party’s request for an administrative hearing. The Department may seek any penalty amount up to and including the statutory maximum at any time.

The hearing administrator will arrange for a hearing officer and set a time and date for the hearing within 30-days of a request. The hearing officer will conduct a hearing of the contested matter, hear testimony of witnesses, admit evidence and

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review applicable law. The hearing proceedings will be recorded and preserved as a record of the proceeding.

The hearing officer shall write the decision in terms of findings of fact, conclusions of law and recommendations. The recommendation is made to the Control Officer who may adopt, revise or reject the hearing officer's recommendation and will then issue the Department's decision. If the Party agrees to the Department's decision the Department and Party may enter into an OAC. The OAC may include the Party taking specified action and/or paying a penalty pursuant to A.R.S. 49-511.

If the Department does not dismiss the matter or the Party fails to enter into an OAC the Department may refer the matter to the U.S. Environmental Protection Agency or the County Attorney's Office for further action which may include commencing action in superior court. This appeal process does not apply to matters that are appealable to the Air Pollution Control Hearing Board and does not in any way limit the Department's right to take authorized actions at any time.